

Testimony Regarding Senate Bill 31  
State Representative David Cullen  
Wednesday, June 3, 2009  
Assembly Committee on Financial Institutions

Chairperson Fields and members of the committee, thank you for the opportunity to appear before you today to testify in support of Senate Bill 31.

As you are aware, this legislation implements the Uniform Prudent Management of Institutional Funds Act that was completed and adopted by the National Conference of Commissioners on Uniform State Laws in 2006. The Act has already been signed into law in 33 other states and the District of Columbia (including our neighbor states of Iowa and Minnesota). Of these 33 states, 9 have enacted the proposal during this session. In addition, it has been introduced and is pending in 14 other states this session, including Wisconsin. Of these 14 states, 5 have passed the proposal in both legislative chambers and it awaits only the signature of the governor before becoming law.

As a member of the Wisconsin Commission on Uniform State Laws, I can tell you that this bill was a unanimous recommendation of the Commission for passage this session. For those of you who may be unaware, the Wisconsin Commission is a nonpartisan group of lawyers that happens to include four legislative members, two each from the State Senate and State Assembly, one Republican and one Democrat from each house. Legislative members of the commission include me and Rep. Gundrum, Senator Risser and former Senator Joanne Huelsman. Among the other members of the Wisconsin Commission are Terry Anderson, former Supreme Court Justice Ann Walsh Bradley, Rick Champagne, Peter Dykman, Shaun Haas, and Bruce Munson.

The responsibility of the various state commissions is to sort through the various proposals that are recommended by the National Conference for introduction in each state. From the many proposals the Wisconsin Commission considers, it recommends only a few each session based on the act's implementation rate in other states and the needs of the state of Wisconsin. As I mentioned, the Uniform Prudent Management of Institutional Funds Act was a unanimous recommendation of the Wisconsin Commission.

Simply put, Senate Bill 31 gives institutional fund managers the tools they need to more easily cope with fluctuations in the market and, in turn, more prudently protect the value of the endowment of the fund they are charged with managing.

By taking language from the Uniform Prudent Investor Act (another Uniform Law Commission proposal that has been adopted in 44 states, including Wisconsin) and the Revised Model Nonprofit Corporation Act, Senate Bill 31 establishes standards of prudence for investing and managing institutional funds by:

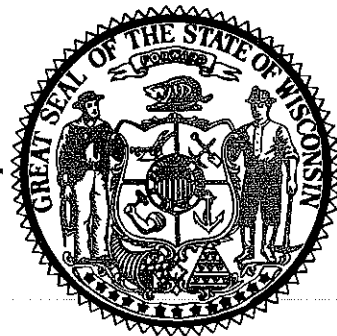
- Making sure that the best investment practices govern the actual investment of institutional funds.
- Providing a modern rule of prudence consistent with the rules that govern investment.
- Eliminating differences in investment and expenditure rules that apply to different types of nonprofit organizations.
- Encouraging the growth of institutional funds while eliminating investment risks that threaten capital.
- Assuring that there are adequate assets in institutional funds to meet program needs.

- And, making the law governing the management of institutional funds uniform in every state.

Senate Bill 31 is supported by the University of Wisconsin, Marquette University, the Wisconsin Association of Independent Colleges and Universities, the Wisconsin Bankers Association, the State Bar of Wisconsin and others. Again, the proposal was a unanimous recommendation by the Wisconsin Uniform Law Commission, it was passed unanimously by the Senate Committee on Veterans and Military Affairs, Biotechnology, and Financial Institutions, and it was approved by a voice vote in the State Senate on May 13<sup>th</sup>.

Thank you. I would be happy to try and answer any questions you may have.

FRED A. RISSE  
President  
Wisconsin State Senate



June 3, 2009

Representative Jason Fields, Chair  
Assembly Committee on Financial Institutions  
221 North, State Capitol  
Madison, WI 53702

Dear Representative <sup>Jason</sup> Fields,

Thank you for holding a hearing on Senate Bill 31, which I have authored. Rep. David Cullen is the lead Assembly sponsor of this measure and introduced the Assembly companion bill, Assembly Bill 58.

The purpose of this bipartisan bill is to implement the Uniform Prudent Management of Financial Institutions Act in Wisconsin. The Act was promulgated by the National Conference of Commissioners on Uniform State Laws. I am a Uniform Law Commissioner as is Rep. Cullen.

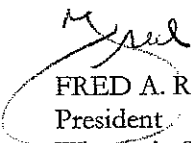
Currently, the law that governs the management and investment of charitable funds and endowment spending is the Uniform Management of Institutional Funds Act (UMIFA) which was adopted by the National Conference of Commissioners on Uniform State Laws in 1972 and adopted by Wisconsin in 1975. UMIFA has been enacted in 47 other states. UMIFA provided uniform and fundamental rules for the investment of funds held by charitable institutions and the expenditure of funds donated as "endowments" to those institutions.

However, prudence standards have evolved since 1972 and the National Conference of Commissioners on Uniform State Laws subsequently adopted a successor Act, the Uniform Prudent Management of Institutional Funds Act (UPMIFA). UPMIFA has already been enacted in 33 states including Indiana, Iowa, and Minnesota, and the District of Columbia.

The standard for investing and managing charitable funds is one of prudence and UPMIFA reflects this standard by taking language from both the Uniform Prudent Investor Act (a trust law statute now adopted in 44 states, including Wisconsin) and the Revised Model Nonprofit Corporation Act (RMNCA). The RMNCA language states that a manager must act, "in good faith and with the care an ordinary prudent person in a like position would exercise in similar circumstances."

SB-31, as amended, received unanimous support in the Senate Committee on Veterans and Military Affairs, Biotechnology, and Financial Institutions and passed the Senate without opposition. It is supported by the University of Wisconsin, Marquette University, the Wisconsin Bankers Association, the Wisconsin Association of Independent Colleges and Universities, and the State Bar, among others. I appreciate your willingness to schedule this measure for a public hearing and I encourage the committee to look favorably upon this important legislation.

Most Sincerely,

  
FRED A. RISSE  
President  
Wisconsin State Senate

FAR:tet

Cc: Assembly Committee on Financial Institutions

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**Testimony of the Wisconsin Bankers Association  
Michael Semmann, Director Government Relations**

**Assembly Committee  
on  
Financial Institutions  
June 3, 2009**

**Testimony in support of Senate Bill 31**

Chairman Fields and members of the Committee:

Thank you for the opportunity to testify on behalf of the Wisconsin Bankers Association (WBA) in support of Senate Bill 31 (SB 31). My name is Michael Semmann, Director Government Relations for WBA. The Wisconsin Bankers Association is the state's largest financial industry trade association, representing 300 commercial banks and savings institutions, their nearly 2,300 branch offices and 30,000 employees.

WBA and the members of the WBA Trust Section support the passage of SB 31, Uniform Prudent Management of Institutional Funds Act (UPMIFA). This bill and its rules govern investment of the funds of charitable organizations and total return expenditure of those funds. It establishes a prudent management investment regime derived from the Uniform Prudent Investor Act (which applies only to trusts) and a prudent total return expenditure based upon performance of the portfolio held by a charitable institution. It also provides for delegation of authority for investment to outside agents and reformation of donor restrictions on funds when these are so outdated that the original objective can no longer be honored.

The effects of SB 31 would be to insure that the best investment practices govern the actual investment of institutional funds and encourages growth of institutional funds while eliminating investment risks that threaten principal. By providing this guidance the bill assures that there are adequate assets in any institutional fund to meet program needs. Given the current fiscal and economic situation, the bill authorizes trustees to act in the best interest of the fund.

The bill withdraws obsolete rules governing prudent total return expenditure and provides a modern rule of prudence consistent with the rules that govern investment. It also eliminates differences in investment and expenditure rules that

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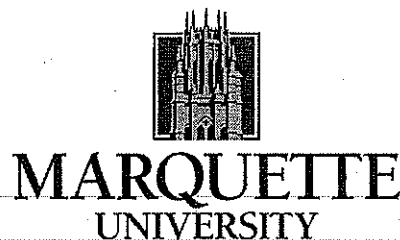
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apply to different types of nonprofit organizations. The same rules govern all under UPMIFA.

The Wisconsin Bankers Association respectfully asks for your consideration to these changes.

*Michael Semmann is the Director Government Relations for the Wisconsin Bankers Association. He can be contacted at (608) 41-1206 or [msemmann@wisbank.com](mailto:msemmann@wisbank.com).*



**Be The Difference.**

TO: All Senators

FROM: Don Nelson, University of Wisconsin- Madison, (608) 265-4105 or (608)217-5110 (cell)  
Mary Czech-Mrochinski, Marquette University, (414) 288-3969 or (414) 313-7315 (cell)

SUBJECT: Senate Bill 31 Regarding the Uniform Prudent Management of Institutional Funds Act

DATE: June 2, 2009

We respectfully request your support of Senate Bill 31, the Uniform Prudent Management of Institutional Funds Act (UPMIFA). On May 6th, the Senate Committee on Veterans and Military Affairs, Biotechnology and Financial Institutions adopted Substitute Amendment 1 to SB 31 and voted 5-0 to pass the bill out of the Committee and the full Senate passed the amended bill on by unanimous vote. Attached is a Legislative Council Memorandum that explains the changes under the substitute amendment.

We are pleased that Senator Risser and Representative Cullen, both of whom serve as Uniform Law Commissioners, have introduced UPMIFA.

We would like to provide you with some background information on Senate Bill 31 as the Wisconsin State Senate considers passage of this legislation.

Currently, the law that governs the management and investment of charitable funds and endowment spending is the Uniform Management of Institutional Funds Act (UMIFA) which was adopted by the National Conference of Commissioners on Uniform State Laws in 1972 and adopted by Wisconsin in 1975. The Commission is a 117 year-old body that provides states with nonpartisan legislation that it intends will bring clarity and stability to critical areas of state statutory law and bring uniformity to state laws where it is practical and desirable. UMIFA has been enacted in 47 other states.

However, UMIFA no longer reflects the prudence standards that have evolved over time and as such the National Conference of Commissioners on Uniform State Laws has adopted the Uniform Prudent Management of Institutional Funds Act (UPMIFA). Senate Bill 31 will simply enact UPMIFA.

30 States and the District of Columbia have already enacted UPMIFA, including Minnesota, Iowa, and Indiana. In addition to Wisconsin, many other states have introduced UPMIFA, including Illinois and Michigan.

UPMIFA modernizes rules reflecting the universal use of a portion of "total return" as the right measure for the expenditure of institutional funds. The rules adopted under UPMIFA also allow institutions the ability to cope more easily with fluctuations in the market and in turn the value of the endowment.

The standard for investing and managing charitable funds is one of prudence and UPMIFA reflects this in taking language from both the Uniform Prudent Investor Act (UPIA), a trust law statute now adopted in 44 states, including Wisconsin, which reflects Modern Portfolio Theory and the Revised Model Nonprofit Corporation Act (RMNCA).

The RMNCA provides a prudent standard and its language states that a manager must act, "in good faith and with the care an ordinary prudent person in a like position would exercise in similar circumstances."

The current UMIFA and the proposed UPMIFA apply to the management and investment of charitable and endowment spending not only at colleges and universities but also to organizations ranging from hospitals to local community foundations.

UPMIFA has already been enacted in 26 states including Indiana, Iowa, and Minnesota. It is expected that additional states will be enacting the legislation in 2009.

Please feel free to contact us if you have any questions.





Be The Difference.

Testimony before the Assembly Committee on Financial Institutions  
Regarding Senate Bill 31- Uniform Prudent Management of Institutional Funds Act  
June 3, 2009

Good morning Chairman Fields and members of the Committee, my name is Mary Czech-Mrochinski, and I am here today to testify in favor of Senate Bill 31 on behalf of Marquette University.

We are pleased that Senator Risser and Representative Cullen have introduced Senate Bill 31 relating to implementing the Uniform Prudent Management of Institutional Funds Act (UPMIFA) here in Wisconsin. On May 6th, the Senate Committee on Veterans and Military Affairs, Biotechnology and Financial Institutions adopted Substitute Amendment 1 to SB 31 and voted 5-0 to pass the bill out of the Committee. On May 13<sup>th</sup>, the SB 31 passed the Senate on a voice vote.

As you may already know, 30 states including Minnesota, Iowa, and Indiana have already enacted the UPMIFA legislation. An additional 15 states including Wisconsin, Illinois and Michigan have introduced the UPMIFA legislation in 2009.

The UPMIFA Act was promulgated by the 117 year old-profit unincorporated association National Conference of Commissioners on Uniform State Laws.

Currently, the law that governs the management and investment of charitable funds and endowment spending is the Uniform Management of Institutional Funds Act (UMIFA) which was adopted by the NCCUSL in 1972 and adopted by Wisconsin in 1975. UMIFA has been enacted in 47 other states.

However, UMIFA no longer reflects the prudence standards that have evolved over time and as such the NCCUSL has adopted the Uniform Prudent Management of Institutional Funds Act (UPMIFA). Under NCCUSL procedures, each uniform act is years in the making. Sandy Wilcox, Executive Director of the UW Foundation can testify to this as he served on the UPMIFA drafting committee.

UPMIFA modernizes rules reflecting the universal use of a portion of "total return" as the right measure for the expenditure of institutional funds. The rules adopted under UPMIFA also allow institutions the ability to cope more easily with fluctuations in the market and in turn the value of the endowment.

UMIFA updated the old trust law concept that only interest and dividends could be spent by allowing asset growth to be appropriated for purposes as long as a fund did not go below its "historic dollar value." UPMIFA builds upon UMIFA's rule of appreciation of assets but eliminates the concept of "historic dollar value" thereby allowing for greater flexibility and focusing on a prudent standard.

The standard for investing and managing charitable funds is one of prudence and UPMIFA reflects this in taking language from both the Uniform Prudent Investor Act (UPIA) (a trust law statute now adopted in 44 states, including Wisconsin) which reflects Modern Portfolio Theory and Revised Model Nonprofit Corporation Act (RMNCA). The RMNCA provides a prudent standard and its language states that a manager must act, "in good faith and with the care an ordinary prudent person in a like position would exercise in similar circumstances."

The current, UMIFA and the proposed UPMIFA, apply to the management and investment of charitable and endowment spending not only at colleges and universities but also to organizations ranging from hospitals to local community foundations. UPMIFA provides guidance and authority to charitable organizations concerning the investment of funds held by these organizations but also imposes additional duties on those that manage these charitable funds. These management duties provide additional protections for the charities but perhaps more importantly also protects the interests of the donors who want to see their contributions used wisely.

Again, I would respectfully request your support of Senate Bill 31. This concludes my testimony and I would be happy to answer any questions the Committee may have at this time.

# Real Property, Probate & Trust Law Section



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**To: Assembly Committee on Financial Institutions**

**Date: June 3, 2009**

**Re: Senate Bill 31 – Uniform Prudent Management of Institutional Funds Act (UPMIFA)**

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The Real Property Probate Trust (RPPT) section of the State Bar of Wisconsin **supports the passage of Senate Bill 31**, the Uniform Prudent Management of Institutional Funds Act (UPMIFA). The section appreciates the work of Senator Risser and Representative Cullen in authoring the legislation.

Currently, the management and investment of assets in funds held by charitable organization is governed by the Uniform Management of Institutional Funds Act (UMIFA), which was enacted into Wisconsin law in 1976. SB 31 replaces UMIFA with the Uniform Prudent Management of Institutional Funds Act (UPMIFA), as approved and recommended by NCCUSL in 2006. UPMIFA updates the prudence standard established in UMIFA to govern the management and investment, providing that one of the enumerated prudence factors is the preservation of the funds, a factor not contained in UMIFA. UPMIFA applies to funds held by institutions exclusively for charitable purposes.

With respect to the management and investment of assets in these funds, UPMIFA requires those who manage and invest assets to do all of the following:

- 1.) Consider the charitable purposes of the institution and the purposes of the institutional fund.
- 2.) Manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.
- 3.) Incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution.
- 4.) Make a reasonable effort to verify facts relevant to the management and investment of the fund.
- 5.) Generally consider general economic conditions; the possible effect of inflation or deflation; the expected tax consequences, if any, of investment decisions or strategies; the role that each investment or course of action plays within the overall investment portfolio of the fund; the expected total return from income and the appreciation of investments; other resources of the institution; the needs of the institution and the fund to make distributions and to preserve capital; and an asset's special relationship or special value, if any, to the charitable purposes of the institution.

State Bar of Wisconsin

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UPMIFA authorizes an institution to appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the purposes for which the endowment fund is established. In making a determination to appropriate or accumulate, an institution must act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and must consider, if relevant, the duration and preservation of the endowment fund; the purposes of the institution and the endowment fund; general economic conditions; the possible effect of inflation or deflation; the expected total return from income and the appreciation of investments; other resources of the institution; and the investment policy of the institution.

### **The RPPT Section urges your support of Senate Bill 31.**

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For additional information contact Cale Battles, Government Relations Coordinator, at (608) 250-6077 or [cbattles@wisbar.org](mailto:cbattles@wisbar.org).

*The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.*

*The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.*